



CHIEF OF NAVAL OPERATIONS

May 18, 2021

The Honorable James M. Inhofe
United States Senate
Committee on Armed Services
Washington, DC 20510-6050

Dear Senator Inhofe:

This letter is in response to your letter of April 30, 2021, requesting my personal views and advice regarding the draft “Military Justice Improvement and Increasing Prevention Act of 2021” (MJIIPA) and its potential effects on the U.S. Navy if the bill, as drafted, is enacted.

In my 36 years of service, including my tours in command, I have witnessed the devastating effects of sexual assault. There is no tolerance for sexual assault within our Navy. This criminal behavior is corrosive to good order and discipline, and leads to a force that is less capable and less ready to execute our critical missions. Finding solutions to end the scourge of sexual assault within our Navy remains among my top priorities.

For some years, the vast majority of general courts-martial within the Navy have been convened by our regional commanders ashore rather than operational commanders. The regional commanders have extensive command experience and the legal staffs required to accommodate this responsibility; I have confidence in the continuity and consistency of cases referred to courts-martial under this framework. Importantly, no operational commanders have reported to me that their ability to maintain good order and discipline has been adversely affected as a result.

However, despite this, I recognize a substantial number of Sailors have lost trust in our Navy’s ability to handle these cases appropriately. This lack of trust prevents some victims from reporting these crimes, depriving them of the care they need, and inhibiting due process for perpetrators who hurt them.

Therefore, I do not oppose thoughtful, evidence-based adjustments to our system that do not undermine the ability of leaders to handle misconduct rapidly and without fear or favor. Consistent with this theme, my view is that an effective military justice system must enable commanders to maintain good order and discipline; provide fair, transparent, and constitutionally-just processes that protect the fundamental rights of the accused; and ensure victims’ rights are respected throughout an impartial and unbiased search for the truth.

With respect to the draft legislation, any changes must be properly defined and resourced with adequate time allocated for extensive review prior to implementation. My first concern is with the broad scope of offenses that would be covered by an alternate judge advocate-run process. By removing commanders’ authority to effectively respond to many of the most serious threats to good order and discipline until they have been vetted by an alternate judge advocate


process, MJIIPA erodes the ability of commanders to create and maintain the environment necessary to effectively exercise mission command. Large scale removal of commanders' authority could cause Sailors to doubt the capabilities of their commanders or to believe that their commanders operate without the full trust of their superiors. Additionally, diverting nearly all serious offenses to judge advocates could be counterproductive to our prevention efforts, which emphasize the critical responsibility of senior leaders. If the real issue to be addressed is sexual assault, then any change must be focused on that problem. I have seen no evidence that there is a lack of trust among victims for *all* crimes for which the punishment exceeds one year of confinement, which is the range of offenses which MJIIPA seeks to cover.

I also have concerns with the MJIIPA implementation timeline. MJIIPA's amendments are substantial. They require thorough evaluation and revision of the Uniform Code of Military Justice, the Manual for Courts-Martial, and numerous Department of Defense (DoD) and service regulations and policies. This time-consuming process must be performed with care to minimize the risk of legal error. If MJIIPA goes into effect without careful implementation, there is significant risk that cases may be delayed during trial or overturned on appeal. This, in turn, would erode confidence in the system and re-victimize victims.

I must emphasize the key to driving down the number of sexual assaults is effective prevention. Quite frankly, we will not prosecute our way to fewer cases. Rather, our efforts must begin far to the left of the crime and involve cultural transformation, education, and leadership, and accountability. The Navy has remained committed to expanding and improving our prevention efforts. Our Culture of Excellence initiative, which I lead, provides an integrated approach to prevention aimed at destructive behaviors, including sexual assault, and the Navy has forged relationships both within the DoD and in the private sector and academia to incorporate best practices and expertise. We are also eager to receive and incorporate ideas from the Defense Advisory Committee for the Prevention of Sexual Misconduct, which was established by section 550B of the FY-20 National Defense Authorization Act.

Thank you for the opportunity to provide my advice on the draft legislation. I welcome the opportunity for further discussion on the potential impact to the Navy from this proposed legislation, as well as other initiatives to improve our prevention efforts and our military justice system. I appreciate your support for the men and women of the U.S. Navy.

Sincerely,


M. M. GILDAY
Admiral, U.S. Navy
Chief of Naval Operations